

TERMS AND CONDITIONS

Terms and Conditions of Supply

TERMS AND CONDITIONS OF SUPPLY

These Terms apply where Rondo Building Services Pty Ltd ABN 69 000 289 207 (**Supplier**) supplies Goods and/or Services to a Customer.

1. Definitions

In these Terms:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the relevant State and Territory fair trading acts;

Business Day means any day which is not a Saturday, Sunday or public holiday in New South Wales or a public holiday in Auckland, New Zealand (as applicable);

Customer means the person, entity, firm or corporation that acquires Goods or Services from the Supplier pursuant to these Terms and includes the Customer's permitted assigns and successors;

Confidential Information means any information or data that is by its nature confidential, is designated by a party (the **Disclosing Party**) as confidential, or that the other party (the **Receiving Party**) ought reasonably to know is confidential and which is disclosed, made available, communicated or delivered to the Receiving Party by the Disclosing Party (or any of its employees, officers, agents or contractors) directly or indirectly in connection with the Contract and includes trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or the Disclosing Party's business, but excludes any information that is in or becomes part of the public domain otherwise than through a breach of these Conditions or an obligation of confidence owed to the Disclosing Party;

Consequential Loss means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity;

Consumer has the meaning given to it in section 3 of the Australian Consumer Law or section 2(1) of the *Consumer Guarantees Act 1993* (NZ) as applicable;

Consumer Guarantee means any right or statutory guarantee under Division 1 of Part 3-2 of the Australian Consumer Law;

Contract means the contract for purchase of Goods or Services between the Supplier and the Customer which comprises any Commercial Credit Account Application (to which the Customer is a party) these Terms and all orders for Goods or Services placed by the Customer and accepted by the Supplier;

Defective Goods means Goods that are defective in design, performance or workmanship;

Defective Services means Services that are defective in performance;

Goods means goods supplied by the Supplier to the Customer;

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GST Act means *A New Tax System (Goods and Services Tax) Act 1999* or the *Goods and Services Tax Act 1985 (NZ)*, as applicable;

Insolvency Event means the happening of any of these events:

- (a) a party suspends payment of its debts generally;
- (b) a party is or becomes unable to pay its debts when they are due, or is or becomes insolvent within the meaning of the *Corporations Act 2001 (Cth)* or *Companies Act 1993 (NZ)* as applicable;
- (c) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (d) a receiver, receiver and manager or similar official is appointed over or in respect of any of the assets or undertakings of a party;
- (e) a liquidator or provisional liquidator is appointed in respect of a party;
- (f) an administrator is appointed in respect of a party;
- (g) a trustee is appointed in respect of any of the assets or undertaking of a party;
- (h) an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
- (i) a party goes bankrupt; or
- (j) a party ceases, or threatens to cease, to carry on business;

Intellectual Property Rights means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (d) proprietary rights under the *Circuit Layouts Act 1989 (Cth)* or *Layout Designs Act 1994 (NZ)* as applicable.

Loss means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, or otherwise, but does not include Consequential Loss;

New Zealand Consumer Law means the *Consumer Guarantees Act 1993 (NZ)* and the *Fair Trading Act 1986 (NZ)*, in each case, as amended from time to time;

Personal Information means 'personal information' as defined in the *Privacy Act 1988 (Cth)* or *Privacy Act 2020 (NZ)* as applicable, and any other information that is regulated by, or under, any applicable Privacy Law;

PPSA Australia means the *Personal Property Securities Act 2009 (Cth)*;

PPSA NZ means the *Personal Property Securities Act 1999 (NZ)*;

Price means the price for the supply of the Goods or Services as provided for in clause 4;

Privacy Laws means all privacy laws including the *Privacy Act 1988 (Cth)*, the Australian Privacy Principles under that Act, the *Privacy Act 2020 (NZ)* and the Information Privacy Principles under that Act, and any other laws relating to data protection, surveillance, direct marketing or the handling of personally identifiable information or data;

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Representatives means officers, directors, employees, agents, representatives, contractors and/or subcontractors of the relevant party but a party to the Contract and its officers, directors, employees, agents, representatives, contractors and subcontractors are not "Representatives" of the other party to the Contract;

Services mean services supplied by the Supplier to the Customer;

Tax Invoice has the meaning given to it in the GST Act and, if applicable, includes "taxable supply information" (as that term is defined in the Goods and Services Tax Act 1985 (NZ));

Terms means these terms and conditions of supply;

Trade Price means the price list issued to the Customer as updated by the Supplier from time to time in accordance with clause 4(c); and

Trade Price Discount means the percentage discount that is applied to the Trade Price for the Customer as varied by the Supplier from time to time in accordance with clause 4(c).

2. Agreement

- (a) These Terms do not exclude any statutory rights conferred on the Customer which the Supplier is not capable of excluding, restricting or modifying, including statutory rights conferred on the Customer under the Australian Consumer Law or New Zealand Consumer Law, as applicable.
- (b) Subject to clause 2(a), the Supplier and the Customer acknowledge and agree that these Terms take precedence over all other conditions of supply, and applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any order or other documents delivered by the Customer to the Supplier.
- (c) The Supplier may alter these Terms on 30 days' notice to the Customer and the altered terms shall then:
 - (i) apply to orders placed by the Customer after such notice period has elapsed; and
 - (ii) supersede all previous terms and conditions imposed by the Supplier regarding such orders but will not affect any accrued rights and obligations of either party.
- (d) Acceptance by the Customer of these Terms, as amended from time to time in accordance with clause 2(c) may be by any of the following ways:
 - (i) by signing and returning a copy of the amended Terms;
 - (ii) by performing an act that is done with the intention of adopting or accepting these Terms, including continuing to order Goods or Services after receiving these Terms or an amended version of them from the Supplier; or
 - (iii) by oral acceptance.

3. Orders

- (a) Each order placed by the Customer will constitute an offer by the Customer to acquire the Goods or Services from the Supplier on and subject to these Terms and will form part of the Contract if accepted by the Supplier. The Customer will be informed in writing whether an order has been accepted by the Supplier or not.
- (b) The Supplier may refuse to accept an order, or part of an order, placed by the Customer without giving reasons.
- (c) If the Supplier consents (such consent not to be unreasonably withheld) to the cancellation of an order that has already been accepted, the Customer will be liable for any reasonable costs incurred by the Supplier up to the time of cancellation, to the extent permitted by law.

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- (d) Other than under clause 3(c) or as permitted under the Australian Consumer Law or New Zealand Consumer Law (as applicable), the Customer may not without the Supplier's consent (which must not be unreasonably withheld) cancel or request to modify an order after the Supplier has accepted the order.

4. Price

- (a) The Price is in Australian dollars (unless expressly stated to be in New Zealand dollars) and except as otherwise expressly stated, exclusive of insurance, GST and any other sales, value added or similar tax.
- (b) The price of the Goods and/or Services will be as per the Trade Price with the Trade Price Discount applied or as per the Supplier's quoted price (which will include any associated delivery and administration costs) (**Price**). Any quotes provided will be binding on the Supplier for a period of 30 days from the date of quotation and may be accepted by the Customer by written notice to the Supplier at any time within those 30 days (unless the quote is earlier revoked by the Supplier).
- (c) The Trade Price and/or the Trade Price Discount may be varied by the Supplier at any time in accordance with clauses 4(d), 4(e) and 4(f) below.
- (d) If the Trade Price is to be increased or the Trade Price Discount is to be decreased, this variation will be effective on the provision of [30] days' written notice to the Customer (unless the Customer and Supplier have agreed to another notice period).
- (e) If the Trade Price is to be decreased or the Trade Price Discount is to be increased this variation will be effective on the provision of [7] days' written notice to the Customer.
- (f) The varied Trade Price and/or Trade Price Discount will only apply to future orders placed by the Customer after the expiry of the applicable notice period under clauses 4(d) or 4(e). If the Customer does not agree with the varied Trade Price or Trade Price Discount offered to it, it may elect not to place future orders with the Supplier.

5. Payment

- (a) Time for payment for the Goods and/or Services is of the essence and is in accordance with the Customer's credit account (if any) and will otherwise be on delivery of the Goods or the performance of the Services (as applicable).
- (b) All payments are to be made on or before the due date that appears on any relevant invoice as a condition precedent to future deliveries or supplies under this or any other contract.
- (c) The Supplier may require the payment of a deposit as per the Trade Price, as set out in the quote or as otherwise made known to the Customer prior to confirming the order, which must be paid by the Customer upon the Supplier accepting the order.
- (d) Unless otherwise agreed in writing between the parties (such as under a credit account), the Supplier may withhold delivery of the Goods until the Customer has paid for them in full.
- (e) If a Customer has an overdue account they may not benefit from any new special deals, discounts, bonus payments, redemption, rebates or any other incentive program that are offered whilst their account is overdue.
- (f) The Customer must pay the Price for Goods or Services supplied to the Customer using one of the following payments:
- (i) credit card (plus any charges including merchant charges that may be applicable as set out in the Trade Price or quote (as applicable)); or
 - (ii) direct debit; or
 - (iii) bank transfer; or
 - (iv) any other methods as agreed to between the Customer and the Supplier.
- (g) Without prejudice to any other rights or remedies of the Supplier, if the Customer fails to make (whether in full or in part) any payment required under these Terms on or before the due date for payment, then:
- (v) the Customer must pay to the Supplier interest on the unpaid amount at 2% per annum above the most recent lending rate for small business, published by the Reserve Bank of Australia; and

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- (vi) such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the Customer upon demand by the Supplier.
- (h) If the Supplier takes reasonable steps or actions to recover any amount due to it, the Customer will be responsible for all reasonable Loss incurred by the Supplier in recovering the monies due.

6. Delivery

- (a) As per the order submitted by the Customer, the Goods will be either delivered to an address specified by the Customer or will be made available for the Customer to pick up at a Supplier distribution centre.
- (b) The Supplier will use all commercially reasonable efforts to deliver or make available for collection (as applicable) the Goods for which it has accepted an order by the date (if any) specified in the order and in the absence of any date, within a reasonable time.
- (c) Where the Customer is collecting the Goods, the Customer must use all commercially reasonable efforts to collect the Goods within a reasonable time of being notified that they are available for collection from the Supplier's distribution centre.
- (d) The failure of the Supplier to deliver the Goods or make them available for collection (as applicable) by the date specified in the order does not entitle either party to treat an order or the Contract as repudiated.
- (e) The Customer may terminate an order and be refunded all monies paid where the Supplier fails to deliver the Goods or make them available for collection (as applicable) within a reasonable time after the due date, having regard to any extenuating circumstances or problems affecting third party suppliers at the time.
- (f) The Supplier may deliver or provide the Goods by separate instalments. Each separate instalment must be invoiced and paid for in accordance with clauses 4 and 5 but no additional delivery fee will be charged on top of what is provided for in the Trade Price or quotation (as applicable).
- (g) Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of these Terms.
- (h) The Customer is required to unload the Goods from any delivery vehicle when delivery vehicles arrive at the Customer's nominated delivery address.
- (i) Except where the Supplier's liability may not be excluded under the Australian Consumer Law or the New Zealand Consumer Law (as applicable), the Supplier is not liable for any Loss or Consequential Loss due to the failure by the Supplier to deliver or make available the Goods and/or Services (or any part of them) promptly or at all, other than to refund any Price paid by the Customer where the Goods are not delivered at all.
- (j) Unless otherwise agreed, the Supplier's obligations under an order will be deemed complete and delivery effected when risk in the Goods passes to the Customer in accordance with clause 7(a).
- (k) The Customer shall be liable for reasonable costs associated with storage of Goods between the agreed delivery / collection time and the actual delivery / collection time where the delays are caused by the Customer.

7. Title and Risk

- (a) Risk in the Goods passes to the Customer upon the Goods being signed for by the Customer at the delivery location or Supplier distribution centre (as applicable).
- (b) Title to the Goods passes to the Customer on payment in full of the Price for the Goods.
- (c) All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA Australia (as applicable).
- (d) Until full payment in cleared funds is received by the Supplier for the Goods supplied by it to the Customer, the Customer must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.

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- (e) Until full payment in cleared funds is received by the Supplier for the Goods supplied by it to the Customer, as well as all other amounts payable by the Customer to the Supplier on any account whatsoever:
- (i) legal title and property in the Goods supplied under the Contract remain vested in the Supplier and do not pass to the Customer;
 - (ii) subject to clause 7(e)(iii) below, the Customer must keep the Goods separate from other goods and maintain the labelling and packaging of the Supplier so that they are readily identifiable as the property of the Supplier;
 - (iii) the Customer must not sell the Goods except in the ordinary course of the Customer's business and must not sell the Goods at all where the Customer suffers an Insolvency Event;
 - (iv) the Customer must maintain adequate records of those Goods that are owned by the Supplier and if they are sold or disposed of, to whom they are sold or disposed to and any payments made by those persons for those Goods;
 - (v) in addition to any rights the Supplier may have under Chapter 4 of the PPSA Australia or Part 9 of the PPSA NZ, as applicable, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Customer to enter any premises of the Customer where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Supplier, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all Loss suffered or incurred by the Supplier as a result of exercising its rights under this clause, except to the extent that such Loss was directly caused by the Supplier's negligence. If there is any inconsistency between the Supplier's rights under this clause 7(e)(v) and its rights under Chapter 4 of the PPSA Australia or Part 9 of the PPSA NZ as applicable, this clause 7(e)(v) prevails to the extent permitted by law;
 - (vi) the Customer acknowledges and warrants the Supplier has a security interest (for the purposes of the PPSA Australia and PPSA New Zealand) in the Goods and any proceeds described in clause 7(e)(v) until title passes to the Customer in accordance with this clause 7. The Customer must do anything reasonably required by the Supplier to enable the Supplier to register its security interest, with the priority the Supplier requires and to maintain that registration; and
 - (vii) the security interest arising under this clause 7 attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 7 attaches at any later time.

8. Shortfalls

- (a) The Customer must, as soon as possible after delivery, check the quantity of the Goods delivered against the quantity due to be delivered.
- (b) Subject to the Australian Consumer Law and New Zealand Consumer Law (as applicable), and as otherwise permitted by law, the Supplier is not responsible for making good any shortage unless the Customer gives the Supplier notice of the shortage within 7 Business Days of delivery.

9. Samples and Descriptions

- (a) As variations will occur in the colour and texture of materials used in the manufacture of products no warranty or guarantee is given by the Supplier that the Goods will correspond in appearance with any sample, display, or goods previously sold, except as required under the Australian Consumer Law or New Zealand Consumer Law, as applicable.
- (b) No warranty or guarantee is given by the Supplier whatsoever regarding the quality, condition, colour, merchantability, or fitness for purpose of the Goods, except as required under the Australian Consumer Law or New Zealand Consumer Law, as applicable.

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- (c) Subject to the Australian Consumer Law or New Zealand Consumer Law, as applicable, the Customer expressly acknowledges that for all purposes whatsoever the Customer has relied entirely on their own knowledge, skills, and judgment in selecting and ordering the Goods.

10. Defective Goods or Services

- (a) In the case of the Customer being a Consumer, the following notice applies to the Customer:

"Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law or the New Zealand Consumer Law, as applicable. For major failures with the service, you are entitled:

- to cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service".

- (b) Subject to the Australian Consumer Law or the New Zealand Consumer Law, as applicable, the Customer must, as soon as reasonably possible after delivery of the Goods or the performance of the Services and acting reasonably, check whether the Goods or Services are Defective Goods or Defective Services when delivered and/or performed, and notify Supplier promptly of the same.
- (c) If the Customer gives the Supplier notice under clause 10(b) that it believes, acting reasonably, that the Goods are Defective Goods, it must:
- (i) preserve the Goods in the state in which they were when the defect was discovered and allow the Supplier access to the Customer's premises (or any location where the Goods are stored) to inspect the Goods; or
 - (ii) at the Supplier's request, return the Goods, at the Customer's cost within 5 Business Days after the Supplier requested the Goods be returned in the condition in which they were when the defect was discovered.
- (d) Subject to the Australian Consumer Law or the New Zealand Consumer Law, as applicable, the Customer must give the Supplier notice of any Defective Services within 20 Business Days after the relevant Service has been provided.
- (e) Subject to any claim or right the Customer may have under the Australian Consumer Law or the New Zealand Consumer Law, as applicable, where the Supplier (acting reasonably) determines that the Goods or Services are in fact Defective Goods or Defective Services, the Supplier will at its election and within a reasonable time, replace/reperform or refund the Customer for the Defective Goods or Defective Services (as applicable). Customer's cost to return the Goods will be reimbursed by the Supplier where the Goods are determined by the Supplier to be Defective Goods.

11. Returns where Goods are not Defective Goods

Except where the Customer has rights to return Goods under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified (as per clauses 10 and 13(a)) Goods (other than custom goods) may only be returned for credit with the prior written approval of the Supplier provided:

- (a) the Customer notifies the Supplier of its intent to return the Goods within 7 days of delivery;
- (b) the Goods are returned in the same re-saleable condition as when they were originally sold (including packaging (as applicable)), and the costs of return shall be borne by the Customer; and
- (c) the Customer pays an amount notified by the Supplier to the Customer prior to return of the Goods representing the Supplier's actual costs and expenses resulting from the return of the Goods (including restocking / handling fees).

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12. Warranties

- (a) If the Goods come with a manufacturer's warranty, the Supplier will use its best endeavours to pass on to the Customer the benefit of such warranties with respect to the Goods or parts thereof supplied to the Customer, subject to the terms and conditions of such warranties.
- (a) If the Goods come with a Supplier express warranty (such as the EXANGLE® RT product range) the express warranty will be granted on the terms and conditions of the relevant warranty card. The customer must make a claim as set out in the warranty card.

13. Claims and limitation of liability

- (a) The Australian Consumer Law or the New Zealand Consumer Law, as applicable, provides Consumers with a number of Consumer Guarantees that cannot be excluded or limited. The limitations of liability set out in these Terms are therefore subject to, and will not apply, to the extent that they limit or exclude such Consumer Guarantees.
- (b) The Customer must:
 - (i) promptly inform the Supplier of all complaints or claims relating to any of the Goods or Services;
 - (ii) not admit liability on behalf of the Supplier to a customer of the Customer in respect of any complaint or claim relating to any of the Goods or Services;
 - (iii) not resolve or settle any complaint or claim relating to any of the Goods or Services which may result in the Supplier incurring any liability (whether to a customer, the Customer or any other person) without the Supplier's consent; and
 - (iv) deal promptly with all complaints or claims relating to any of the Goods or Services which will not result in the Supplier incurring any liability.
- (c) Subject to clauses 13(a) and 13(d), the Supplier's liability for any Loss suffered or incurred by the Customer, howsoever caused, which arises out of or in connection with the supply of the Goods or Services under the Contract:
 - (i) in the case of Goods, is limited to:
 - (A) the replacement of the Goods or the supply of equivalent goods;
 - (B) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and
 - (ii) in the case of the Services, is limited to:
 - (A) the supplying of the Services again; or
 - (B) the payment of the cost of having the Services supplied again; and
 - (iii) in any other case, is excluded such that the Supplier shall not be liable to the Customer, except to the extent that the Loss suffered or incurred by the Customer was directly caused by an act or omission of the Supplier.
- (d) The Supplier's liability in respect of a breach of or a failure to comply with an applicable Consumer Guarantee will not be limited in the way set out in clause 13(c) if:
 - (i) the Goods or the Services supplied are goods or services "of a kind ordinarily acquired for personal, domestic or household use or consumption", as that expression is used in section 64A of the Australian Consumer Law;
 - (ii) it is not "fair or reasonable" for the Supplier to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or

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- (iii) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.
- (e) Except only for those rights and remedies that the Customer has in respect of the Goods or Services under the Australian Consumer Law or the New Zealand Consumer Law, as applicable, which cannot be lawfully excluded, restricted or modified:
 - (i) neither party will be liable for Consequential Loss;
 - (ii) all conditions, warranties and implied terms, whether statutory or otherwise, are excluded in relation to the Goods and/or Services; and
 - (iii) each party's liability for any Loss which the other party suffers, incurs or is liable for in connection with supply of the Goods or Services under the Contract is limited to the Price paid or payable for those Goods or Services, except in connection with death, personal injury, illness, property damage and fraud.
- (f) To the extent that the Consumer Guarantees Act 1993 (NZ) ("**CGA**") and/or of the Fair Trading Act 1986 (NZ) ("**FTA**") applies to any Goods or Services, for the purposes of section 43(2) of the CGA and section 5D of the FTA, where each party is in trade (as that term is defined under the CGA or FTA, as applicable) and the Goods or Services supplied are supplied and acquired in trade (as that term is defined under the CGA or FTA, as applicable) the parties agree and acknowledge that:
 - (i) the provisions of the CGA and sections 9, 12A and 13 of the FTA are hereby contracted out of; and
 - (ii) it is fair and reasonable that the parties are bound by this clause.
- (g) All conditions or warranties implied under Part 3 of the Contract and Commercial Law Act 2017 (NZ) are expressly excluded.

14. Intellectual Property

- (a) The Supplier remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Supplier prior to the Contract and any other agreement with the Customer.
- (b) Where any designs or specifications have been supplied by the Customer then the Customer warrants that the use of those designs or specifications for the manufacturing, processing, assembly or supply of the Goods does not infringe the rights of any third party.
- (c) The parties agree that any Intellectual Property Rights created or developed under or in connection with the Contract or in the course of supplying the Goods are owned by the Supplier. For the avoidance of doubt, where the Supplier has designed or drawn Goods for the Customer, then the copyright in those designs and drawings remain vested in the Supplier, and may only be used by the Customer to the extent necessary for the Customer to derive the benefit of the Goods and / or Services.

15. GST

- (a) Words or expressions used in this clause 15 that are defined in the GST Act have the same meaning given to them in that Act.
- (b) Unless otherwise stated, any amount specified in the Contract as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- (c) If a party makes a taxable supply under the Contract (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- (d) Despite anything stated in this clause 15, the Recipient is not obliged under the Contract to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

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- (e) If an adjustment event arises in relation to a taxable supply made by a Supplier under the Contract, the amount paid or payable by the Recipient pursuant to clause 15(c) will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- (f) If a third party makes a taxable supply and the Contract requires a party to the Contract (the **Payer**) to pay for, reimburse or contribute to (**Pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the Payer must Pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

16. Termination

- (a) Either party (**Terminating Party**) may immediately terminate the Contract by written notice to the other party if the other party (**Defaulting Party**):
 - (i) breaches the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
 - (A) cannot be remedied; or
 - (B) can be remedied, but is not remedied by the Defaulting Party within 5 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - (ii) suffers an Insolvency Event.
- (b) Both parties must, within 20 Business Days after the date of expiry or termination of the Contract return all Confidential Information to the other party.
- (c) If the Contract is terminated under this clause 16 due to the Customer's breach, the Supplier will have an immediate right to all amounts owing by the Customer in respect of the Goods and Services together with all other debts owing by the Customer to the Supplier and such amounts must be paid by the Customer on demand by the Supplier. Further, the Supplier will be entitled (without prejudice to any other right or remedy provided under these Terms or otherwise) to do any one or more of the following:
 - (i) suspend indefinitely all further deliveries of Goods and performance of Services in respect of any orders being processed for delivery/performance (as applicable) and cancel any order or refuse to accept any further orders;
 - (ii) cancel any credit facility provided to the Customer;
 - (iii) require the return of all Goods the property in, and ownership of, has not passed in accordance with clause 7; and
 - (iv) exercise its rights under clause 7 to enter the Customer's premises wherever situated without impediment, and with the full co-operation and assistance of the Customer, to locate, retrieve and take possession of Goods held by the Customer.
- (d) If the Contract is terminated under this clause 16 due to the Supplier's breach, the Customer must pay all amounts owing in respect of Goods and/or Services which have already been delivered as per their original payment terms.

17. Indemnity

- (a) Subject to clause 17(c), the Customer indemnifies the Supplier and its Representatives against any Loss which the Supplier and its Representatives suffer, incur or are liable for in connection with:
 - (i) any act or omission of the Customer or its Representatives;
 - (ii) any breach of the Contract by the Customer; and

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- (iii) enforcing any security interest arising under the Contract.
- (b) The Supplier holds the benefit of the indemnity in clause 17(a) on trust for its Representatives.
- (c) The indemnity in clause 17(a) will not apply to the extent that any Loss is caused or contributed to by the Supplier.

18. Confidential Information

- (a) The Receiving Party is authorised to use the Confidential Information for the sole purpose of using or providing (as applicable) the Goods or Services supplied under the Contract and must not otherwise use or disclose any Confidential Information to any third party, except with the prior written consent of the Disclosing Party (such consent not to be unreasonably withheld). The foregoing does not prevent the Receiving Party from disclosing Confidential Information to professional advisors or a related body corporate and if and to the extent required by law or the rules of a stock exchange provided the Receiving Party notifies the Disclosing Party prior to making such disclosure (or if prior notice is not legally possible, notice is given as soon as legally possible following compelled disclosure).
- (b) The Receiving Party must not transfer or disclose Confidential Information without the Disclosing Party's prior written consent.
- (c) On request, the Receiving Party must deliver to the Disclosing Party (or if specifically requested, destroy or immediately cease accessing and otherwise using) all hard copy and electronic documents, materials and things containing Confidential Information, that is in the possession, custody or control of the Receiving Party or any person it has disclosed it to and certify to the Disclosing Party that it has done so.

19. Privacy and credit reporting

- (a) The Customer acknowledges that its credit information and personal information will be dealt with as set out in the Supplier's credit reporting policy (<https://www.rondo.com.au/about/general-information/credit-reporting>) and the Supplier's privacy policy (<https://www.rondo.com.au/about/general-information/privacy-policy>).
- (b) If the Customer has any questions or concerns about the Supplier's Privacy Policy or the Supplier's Credit Reporting Policy, the Customer is to direct the requests to the Human Resources at the Supplier's Head Office address at 57-87 Lockwood Road, Erskine Park NSW 2759 (PO Box 324, St Marys NSW 1790).

20. Force Majeure

- (a) In this clause 20, **Force Majeure** means an act of God, fire, storm, flood; war, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances; a governmental restraint; a pandemic or epidemic; a shortage or unavailability of raw materials, production capacity or transportation; theft, vandalism; and any other event not within the reasonable control of either party that impacts on a party's ability to carry out their obligations under the Contract.
- (b) Where Force Majeure prevents or delays a party from performing any obligation under the Contract (other than an obligation to pay money), the requirement to perform that obligation is suspended as long as the Force Majeure continues.
- (c) Where a Force Majeure persists for more than one (1) month either party may terminate the Contract by written notice to the other party and clause 16(d) will apply.

21. PPSA

- (a) Unless a contrary intention appears, words or expressions used in this clause 21 that are defined in the PPSA Australia or PPSA NZ have the same meaning as given to them in the PPSA Australia or PPSA NZ (as applicable).

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- (b) If at any time the Supplier determines that the Contract (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Supplier may apply for any registration, or give any notification, in connection with that security interest and the Customer must promptly, upon the Supplier's request, do anything (including signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
- (i) provide more effective security over the relevant personal property;
 - (ii) ensure that any such security interest in favour of the Supplier:
 - (A) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
 - (B) ranks as a first priority security interest;
 - (iii) enable the Supplier to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
 - (iv) enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPSA Australia.
- (c) All costs and expenses arising as a result of actions taken by the Customer pursuant to clause 21(b) will be for the account of the Customer.
- (d) If Chapter 4 of the PPSA Australia, or Part 9 of the PPSA NZ as applicable, would otherwise apply to the enforcement of the security interest created under the Contract, the Customer agrees that the following provisions of the PPSA Australia or PPSA NZ will not apply:
- (i) section 95 of the PPSA Australia and section 129 of the PPSA NZ (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;
 - (ii) section 121(4) of the PPSA Australia (enforcement of liquid assets – notice to grantor);
 - (iii) section 125 of the PPSA Australia (obligation to dispose of or retain collateral), and section 120(2) of the PPSA NZ (proposal of secured party to retain collateral) to the extent that it requires the Supplier to give a notice to the Customer;
 - (iv) section 130 of the PPSA Australia (notice of disposal), to the extent that it requires the Supplier to give a notice to the Customer, and section 114(1)(a) of the PPSA NZ (notice of sale of collateral – notice to debtor) to the extent that it requires the Supplier to give a notice to the Customer;
 - (v) paragraph 132(3)(d) of the PPSA Australia (contents of statement of account after disposal) and section 116 of the PPSA NZ (secured party to give statement of account to debtor);
 - (vi) subsection 132(4) of the PPSA Australia (statement of account if no disposal);
 - (vii) section 142 of the PPSA Australia (redemption of collateral); and
 - (viii) section 143 of the PPSA Australia (reinstatement of security agreement) and section 133 of the PPSA NZ (debtor may reinstate security agreement);
 - (ix) section 121 of the PPSA New Zealand (proposal to retain collateral); and
 - (x) section 125 of the PPSA New Zealand (damage when removing an accession) and section 131 of the PPSA (court order for removal of accession).
- (e) The Supplier does not need to give the Customer any notice required under the PPSA Australia or PPSA New Zealand (including a notice of a verification statement under section 157 of the PPSA Australia or under the PPSA New Zealand) unless the requirement for the notice cannot be excluded.

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- (f) Neither party will disclose to a person or entity that is not a party to the Contract information of the kind mentioned in section 275(1) of the PPSA Australia or section 177 of the PPSA NZ unless section 275(7) of the PPSA Australia or section 177(2) of the PPSA NZ applies or that information is publicly available. The obligations of each party under this clause 21(f) are in addition to the obligations of the Customer under clause 18.

22. Notice

- (a) Both parties agree that service of any notices may be effected by email or post.
- (b) Both parties also agree to accept the service of notices (under the following Acts) via email (in addition to any and all other forms of service authorised under the following Acts):
- (i) Building and Construction Industry Security of Payment Act 1999 (NSW);
 - (ii) Building and Construction Industry Payment Act 2004 (QLD);
 - (iii) Building and Construction Industry Security of Payment Act 2002 (VIC);
 - (iv) Building and Construction Industry (Security of Payment) Act 2021 (WA);
 - (v) Building and Construction Industry (Security of Payment) Act 2009 (SA);
 - (vi) Building and Construction Industry (Security of Payment) Act 2009 (ACT); and
 - (vii) Building and Construction Industry (Security of Payment) Act 2009 (TAS).

23. General

- (a) The Contract is governed by the laws of:
- (i) New South Wales, if the Customer's address provided in Part 2 is not in New Zealand; and
 - (ii) New Zealand, if the Customer's address provided in Part 2 is in New Zealand.
- (b) Customer submits to the non-exclusive jurisdiction of the courts of:
- (i) New South Wales and courts of appeal from them, if the Customer's address provided in Part 2 is not in New Zealand; and
 - (ii) New Zealand, and courts of appeal from them, if the Customer's address provided in Part 2 is in New Zealand.
- (c) A reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it.
- (d) In these Terms, the words "include", "including", "for example", "such as" or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words "without limitation" unless there is express wording to the contrary.
- (e) If a provision in these Terms is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Terms.
- (f) If the Customer comprises more than one person:
- (i) the Contract binds each Customer jointly and severally; and
 - (ii) the Supplier is only required to give notices, quotes and other information, to one of the Customers (who undertakes to provide the notices, quotes and information to the other Customer or Customers).
- (g) A waiver of any right arising under the Contract must be in writing and signed by the party granting the waiver.
- (h) Any variation of the Contract must be in writing and signed by the parties.
- (i) The Supplier and the Customer are independent contracting parties and nothing in the Contract makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other.

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- (j) The Customer must give the Supplier not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to changes in the Customer's address, facsimile number, or business practice).
- (k) Without limiting or affecting the continued operation of any clause which as a matter of construction is intended to survive the termination of the Contract, clauses 5, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 21 and 23 survive the termination of the Contract.

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